

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,  
Plaintiff,  
v.  
BARAONA, et al.,  
Defendants.

No. 1:21-cv-01448-KES-BAM (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS TO DISMISS  
DEFENDANT DOE 1 FROM ACTION  
WITHOUT PREJUDICE

(Doc. 84)

Plaintiff Durrell Anthony Puckett is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. (Doc. 16.) This action proceeds on plaintiff's second amended complaint against: (1) defendants A. Baraona, R. Burnitzki,<sup>1</sup> R. Leos, H. Hernandez, E. Diaz, and Doe 1 for excessive force in violation of the Eighth Amendment; (2) defendant R. Leos for sexual assault in violation of the Eighth Amendment; and (3) defendants A. Ruiz, R. Martinez, E. Ruiz, G. Meier,<sup>2</sup> R. Gutierrez, J. Cruz, K. Allison (Cronister), and T. Price for failure to protect in violation of the Eighth Amendment. (Docs. 1, 10, 16, 83.)

<sup>1</sup> Plaintiff's initial complaint identified this defendant as "Burneszki"; plaintiff's second amended complaint now identifies the defendant as "Burnitzki."

<sup>2</sup> Erroneously sued initially as "Meiers."

On February 26, 2024, plaintiff filed a motion to substitute the identity of defendant Jane Doe, together with a lodged amended complaint identifying defendant Jane Doe as defendant T. Price. (Docs. 80, 81.) Plaintiff did not provide any information regarding defendant Doe 1. (*Id.*) Accordingly, on March 21, 2024, the assigned magistrate judge issued an order granting plaintiff's motion to substitute and directing the Clerk of the Court to substitute defendant T. Price for defendant Jane Doe Nurse. (Doc. 84.) The magistrate judge also issued findings and recommendations, recommending that defendant Doe 1 be dismissed from this action, without prejudice, pursuant to Federal Rule of Civil Procedure 4(m). (*Id.*) Those findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 4.) No objections have been filed, and the deadline to do so has expired.

In accordance with the provisions of 28 U.S.C. § 636(b)(1), this court has conducted a de novo review of the case. After carefully reviewing the file, the court concludes that the findings and recommendations are supported by the record and proper analysis.

Accordingly:

1. The findings and recommendations issued on March 21, 2024, (Doc. 84), are adopted in full;
2. Defendant Doe 1 is dismissed from this action, without prejudice, pursuant to Federal Rule of Civil Procedure 4(m);
3. This action shall proceed on plaintiff's second amended complaint **only** against:  
(1) Defendants A. Baraona, R. Burnitzki, R. Leos, H. Hernandez, and E. Diaz for excessive force in violation of the Eighth Amendment; (2) Defendant R. Leos for sexual assault in violation of the Eighth Amendment; and (3) Defendants A. Ruiz, R. Martinez, E. Ruiz, G. Meier, R. Gutierrez, J. Cruz, K. Allison (Cronister), and T. Price for failure to protect in violation of the Eighth Amendment; and

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1           4.       This matter is referred back to the assigned magistrate judge for further  
2                       proceedings consistent with this order.

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5 IT IS SO ORDERED.

6       Dated: August 14, 2024

  
UNITED STATES DISTRICT JUDGE